STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
COUNTY OF MARION	) SS: )	CAUSE NO. 49D06-1010-PL-47381
STATE OF INDIANA,		)
Plaintiff,		FILED
v.		jun 2 <sup>3</sup> 2011
WELLPOINT, INC.		Charloth of white
Defendant		CLERK OF THE MARION CIRCUIT COURT

# PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL

The Plaintiff, the State of Indiana, by Attorney General Gregory F. Zoeller and Deputy Attorney General Lyman C. Taylor, III, pursuant to Trial Rule 41(A)(2) of the Indiana Rules of Trial Procedure, hereby files Plaintiff's Motion for Voluntary Dismissal in the above-captioned cause. Plaintiff states the following in support thereof:

- 1. Pursuant to Indiana Rule of Trial Procedure T.R. 41(A)(2), an action may be voluntarily dismissed by a Plaintiff upon order of the court and upon such terms and conditions as the court deems proper.
- 2. On or about June 20, 2011, the Parties in this action entered into and agreed to be bound by a Settlement Agreement (Agreement), a copy of which is incorporated by reference and attached hereto as **Exhibit A**.
- 3. The Agreement settles all matters in this action.

WHEREFORE, the State of Indiana, by Attorney General Gregory F. Zoeller and Deputy Attorney General Lyman C. Taylor, III, requests that the Court grant Plaintiff's Motion for Voluntary Dismissal upon the terms and conditions of the Parties' Settlement Agreement.

Respectfully submitted,

GREGORY F. ZOELLER Attorney General of Indiana Attorney No.: 1958-98

Bv: Č

Lyman C. Taylor, III

Deputy Attorney General Attorney No.: 25128-55

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion for Voluntary Dismissal* has been duly served upon the following person listed below, by United States mail, first-class, postage prepaid, on this 22<sup>6d</sup> day of June, 2011.:

WellPoint, Inc.
Pamela C. Williams, Esq.
120 Monument Circle
IN0102-B370
Indianapolis, IN 46204

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
COUNTY OF MARION	) SS: )	CAUSE NO. 49D06-1010-PL-47381
STATE OF INDIANA,		)
Plaintiff,		)
ν.		)
WELLPOINT, INC.		· ·
Defendant.		)

#### SETTLEMENT AGREEMENT

## SCOPE OF AGREEMENT AND ACKNOWLEDGMENTS

- 1. This Court has jurisdiction and venue over the subject matter of this action and the parties hereto. Jurisdiction of this Court over the subject matter and over the Defendant for the purpose of entering into and enforcing this Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State of Indiana or Defendant to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order, including issues related to the enforcement of compliance therewith and penalties for violation thereof.
- 2. The State of Indiana's Complaint for Injunction, Costs, and Civil Penalties, states a cause of action pursuant to the Indiana Disclosure of Security Breach Act, Ind. Code § 24-4.9-4-2., et seq.
- 3. The Defendant, WellPoint, Inc. is a domestic corporation doing business in Indiana as a provider of insurance services, with a principal place of business at 120 Monument Circle, Indianapolis, Indiana, 46204.

4. The Defendant acknowledges it has been advised that the Attorney General's role in this matter is to serve as counsel for the State of Indiana, and the Office of the Attorney General has not given the Defendant any legal advice regarding this matter.

# AGREEMENT AND OBLIGATIONS ("Agreement")

- 5. Defendant admits that certain personal information of some Indiana residents was accessible from October 23, 2009 to March 8, 2010 (hereinafter "the relevant period") on an online application tracker website operated by companies owned by or affiliated with WellPoint.
- 6. Defendant admits it did not simultaneously notify the Indiana Attorney General when it provided written notification to Indiana consumers that their personal information may have been accessible during the relevant period.
- 7. At no cost to consumers, Defendant agrees to offer one (1) additional year of credit monitoring and identity theft protection services to all Indiana consumers who originally registered for one (1) year of such service in response to Defendant's security breach notification letter. The total complementary protection offered to these consumers is two (2) years. At no cost to consumers, Defendant agrees to offer two (2) years of credit monitoring and identity theft protection services to all Indiana consumers who originally received Defendant's security breach notification letter but did not enroll in the service offered. The total complementary protection offered to these consumers is two (2) years. This benefit will be offered by Debix, via the class settlement mechanisms set forth in the WellPoint/Blue Cross Website Security Cases, *California Judidical Council Coordinated Proceeding No. 4647.* Additional information regarding how to elect this benefit will be available at www.AnthemBlueCrossSecuritySettlement.com.
- 8. Defendant agrees to provide reimbursement for proven identity theft losses occurring more likely than not as a result of this incident, up to \$50,000 per each person, to any Indiana

consumer who was a victim of identity theft as a result of their information being accessed during the relevant period described herein. This benefit will be offered by Debix, via the class settlement mechanisms set forth in the WellPoint/Blue Cross Website Security Cases, *California Judidical Council Coordinated Proceeding No. 4647.* Additional information regarding how to elect this benefit will be available at www.AnthemBlueCrossSecuritySettlement.com.

### **GENERAL PROVISIONS**

- 9. The Parties have agreed to resolve the issues raised by the State by entering into this Agreement. Defendant is entering into this Agreement solely for the purpose of settlement and, unless expressly admitted, nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Defendant expressly denies.
- 10. This Agreement is made prior to and without trial or adjudication of any issue of fact or law or finding of wrongdoing or liability of any kind. Except as otherwise stated or to the extent required by law, it is the intent of the Parties that this Agreement shall not be admissible in any other matter, including, but not limited to, any investigation or litigation, or bind Defendant in any respect other than in connection with the enforcement of this Agreement.
- 11. This Agreement constitutes a complete settlement and release by the State of Indiana of all civil claims against Defendant, and its successors, employees, officers, directors and assigns, arising from any act, representation, or omission that is the subject of this Agreement and that occurred prior to the execution of this Agreement.
  - 12. This Agreement shall be governed by the laws of the State of Indiana.
- 13. Defendant represents that it has fully read and understood this Agreement, it understands the legal consequences involved in signing this Agreement, and there are no other

representations or agreements between Defendant and the State of Indiana not stated in writing herein.

- 14. Defendant represents and warrants that it is represented by legal counsel, that it is fully advised of its legal rights in this matter and that the person signing below is fully authorized to act on its behalf.
- 15. This Agreement shall bind Defendant and shall be binding on any and all of its successors, employees, officers, directors, and assigns.
- 16. Defendant shall provide a copy of this Agreement and an accurate summary of the material terms of this Agreement to its senior executive officers who have managerial responsibility for the matters subject to this Agreement. Upon written request, Defendant will provide the State with proof it has completed this process within 30 days of such request.
- 17. This Agreement contains the entire agreement between Defendant and the State of Indiana. Except as otherwise provided herein, this Agreement shall be modified only by a written instrument signed by both parties.
- 18. Neither Defendant nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the State of Indiana, or any governmental unit of the State of Indiana has approved, sanctioned, or authorized any practice, act, or conduct of Defendant addressed herein.
- 19. Nothing in this Agreement shall be construed as a waiver of or limitation on Defendant's right to defend itself from or to make agreements in any private individual or class action, state, or federal claim, suit or proceeding relating to the existence, subject matter or terms of this Agreement.

- 20. Nothing in this Agreement shall be construed to affect or deprive any private right of action that any consumer, person, entity, or any local, state, federal or other governmental entity, may hold against Defendant, except as otherwise provided by law.
- 21. The titles and headers to each section of this Agreement are for convenience purposes only and are not intended by Defendant or the State to lend meaning to the actual terms of this Agreement.
- 22. If any clause, provision or section of this Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Agreement and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.
- 23. Nothing in this Agreement shall be construed as relieving Defendant of its obligation to comply with all state and federal laws and regulations, nor shall any of the terms of this Agreement be deemed to grant Defendant permission to engage in any acts or practices prohibited by such laws and regulations.
- 24. Any failure by any party to this Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorney fees to the State.
- 25. Time shall be of the essence with respect to each provision of this Agreement that requires action to be taken by Defendant within a stated time period or upon a specified date.

- 26. This Agreement sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Agreement which are not fully expressed herein or attached hereto.
- 27. Defendant further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Agreement.
- 28. This document may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

#### COMPLIANCE

- 29. Defendant agrees that, directly or through any corporation, partnership, subsidiary, division, trade name, device, affiliate, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Agreement, by personal service or otherwise, it shall:
  - a. disclose a breach of the security of data, without unreasonable delay, to Indiana residents whose personal information was or reasonably could have been acquired by an unauthorized person if the unauthorized acquisition has resulted or reasonably could result in identity deception, identity theft, or fraud affecting the Indiana resident; and
  - b. disclose a breach of the security of data, without unreasonable delay,

to the Indiana Attorney General after providing notice to affected Indiana consumers.

- 30. Any violation of those provisions set forth in paragraph 29 above shall subject Defendant to the remedies and penalties of the Indiana Disclosure of Security Breach Act, including but not limited to Ind. Code § 24-4.9-4-2.
- 31. Defendant has developed and implemented compliance procedures reasonably designed to ensure compliance by Defendant with the obligations contained in paragraph 30 of this Agreement. With respect to its agents, Defendant shall (a) notify its agents of the relevant provisions of this Agreement; (b) ensure that all policies adopted by Defendant are in conformity with the terms of this Agreement; and (c) not direct its agents to take any action or implement any practice that is in contravention of this Agreement.
- 32. In the event that the State receives or discovers allegations, evidence, or information indicating that the Defendant has violated this Agreement, the State shall notify the Defendant of the apparent violation and provide the Defendant with an opportunity to respond to the allegations, evidence, or information prior to seeking remedies and penalties under the Disclosure of Security Breach Act.

#### **PAYMENT**

33. Defendant shall pay the amount of One Hundred Thousand Dollars (\$100,000.00) to the Indiana Office of Attorney General within twenty-one (21) days from the date that this Agreement is accepted by the Court. These funds shall be paid by electronic fund transfer in accordance with instructions provided to Defendant by counsel for the State.

34. Said payment may be used for attorney's fees and other costs of investigation and litigation, or may be placed in the consumer assistance fund, including any future consumer assistance fund created, or used for any purpose permitted by State law, at the sole discretion of the Attorney General.

# **CONTINUING JURISDICTION**

35. For the purpose of enforcing the provisions of this Agreement, any subsequent court obtaining jurisdiction over the Defendant based upon a complaint alleging a violation of any law that is the subject of this Agreement may take judicial notice of this Agreement and is deemed to be a proper venue for interpretation and enforcement of this Agreement. The Defendant waives any objection regarding a court's jurisdiction to determine whether there has been a violation of this Agreement and agrees to appear upon proper notice of a failure to comply with any of the provisions of this Agreement.

IN WITNESS WHEREOF, the partie	s have executed this Settlement Agreement this
22nd day of <u>June</u>	, 2011.
GREGORY F. ZOELLER Indiana Attorney General Attorney No. 1958-98	WELLPOINT, INC.
By: Lyman C. Taylor III Deputy Attorney General Attorney No. 25128-55	Roy R. Mellinger Vice President & Chief Information Security Officer

Distribution:

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## CONTINUING JURISDICTION

35. For the purpose of enforcing the provisions of this Agreement, any subsequent court obtaining jurisdiction over the Defendant based upon a complaint alleging a violation of any law that is the subject of this Agreement may take judicial notice of this Agreement and is deemed to be a proper venue for interpretation and enforcement of this Agreement. The Defendant waives any objection regarding a court's jurisdiction to determine whether there has been a violation of this Agreement and agrees to appear upon proper notice of a failure to comply with any of the provisions of this Agreement.

22	IN WITNESS WHEREOF, the p	arties have executed this Settlement Agreement this
	GREGORY F. ZOELLER Indiana Attorney General	WELLPOINT, INC.
Ву:	Attorney No. 1958-98	By B. fellinger
Dy.	Lyman C. Taylor III Deputy Attorney General Attorney No. 25128-55	Roy R, Mellinger Vice President & Chief Information Security Officer

Lyman C. Taylor III Office of Attorney General 302 West Washington Street, 5<sup>th</sup> Floor Indianapolis, IN 46204

WellPoint, Inc.
Pamela C. Williams, Esq.
120 Monument Circle
IN0102-B370
Indianapolis, IN 46204

		DAMES AND DESIGNATION COLLECT
STATE OF INDIANA	) ) SS:	IN THE MARION SUPERIOR COURT
COUNTY OF MARION	)	CAUSE NO. 49D06-1010-PL-47381
STATE OF INDIANA,		)
Plaintiff,		FILTER
v.		FILED  JUN 28 2011  CLERK OF THE MARION CIRCUIT COURT
WELLPOINT, INC.		Chapter 2011
Defendant.		CLERK OF THE MARION CIRCUIT COURT
_		
<u>C</u>	RDER OF VO	LUNTARY DISMISSAL
The Court having rev	iewed Plaintiff	s Motion for Voluntary Dismissal, and being duly
advised in the premises, here	eby finds that th	e aforementioned Motion should be GRANTED.
•		

IT IS THEREFORE ORDERED that the above-mentioned case is hereby DISMISSED upon the terms and conditions contained in the Parties' Settlement Agreement.

2011.
f

Judge, Marion County Superior Court

### **Distribution**:

Lyman C. Taylor, III Office of the Attorney General 302 West Washington Street, 5<sup>th</sup> Fl. Indianapolis, IN 46204 Pamela C. Williams, Esq. WellPoint, Inc. 120 Monument Circle IN0102-B370 Indianapolis, IN 46204